

REMARKS

The Examining Attorney has stated that “Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Hanson et al.* (3,988,970; hereinafter *Hanson* '970) in view of *Brock et al.* (3,967,544; hereinafter *Brock* '544). *Hanson* '970 discloses in the embodiment of Figure 2, a flat bottom plastic bag stack comprising a plurality of stacked plastic bags with each of the bags comprising front and rear walls, each of the front and rear walls having first and second side edges, a pair of longitudinally oriented side gussets (14) attached to the first and second side edges, each of the bags having a flat, rectangular bottom formed of lower portions of the front and rear walls and lower portions of the side gussets, lower corners of the each side gussets form downward pointing triangular panels (24, column 4, lines 4-6) and lower portions of the front and rear walls sealed (26) to the triangular panels, each of the bags being folded inwardly at the side gussets and upwardly from either of the front and rear wall at a point spaced upwardly from the bottom edge to form a flattened bag and the bags being stacked upon one another. *Hanson* '970 also discloses the other limitations of the claims except for the plastic bags being formed from polyethylene film. *Brock* '544 teaches a flat bottom bag stack comprising a plurality bags and each bag formed from polyethylene film and each bag being folded inwardly at side gussets and upwardly from either of front and rear wall at a point spaced upwardly from bottom edge to form a flattened bag (Figures 12-14). It would have been obvious to one having ordinary skill in the art in view of *Brock* '544 to modify the bags of *Hanson* '970 so the bags are formed from polyethylene film because such film is considered equivalent to the plastic film of *Hanson* '970 and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.”

While the bags disclosed in *Hanson* '970 and *Brock* '544 appear similar to those described in Claims 2 and 3 of the present invention, they are essentially different in both in their construction and in their resulting structure. The bags of *Hanson* '970 and *Brock* '544 are both formed from an extruded, gusseted plastic tube that is cut to length and sealed across one end. In *Hanson* the sealed tube is then forced over a rectangular mandrel to form a flat bag bottom. In *Brock*, the sealed tube is arranged into a flattened bottom by pairs of grippers moving at different speeds. Neither bag is constructed in the same manner as the bag of the present invention.

In *Hanson*, the “the gusset portions adjacent and held by the bottom seam 16 are folded into triangular flaps in the interior of the bag. In the fourth stage (FIG. 2D), the flaps 24 are heat sealed along lines 26 to the exterior tubing material so that they become integrally formed with the bottom 22 of the bag.” (col. 4, lines 4-9).

In contrast, in the present invention:

“lower corners of said each side gusset being folded outwardly and together to form downward pointing triangular panels; (see Figure 5)

said triangular panels being folded inwardly from said side gussets; (see Figure 6)

lower portions of said front and rear walls being folded inwardly and sealed together to form the bag bottom;

said bag bottom being sealed to said side gussets adjacent upper edges of said triangular panels; (see Figure 7)

said triangular panels being sealed to an upper surface of said bag bottom;

(Claim 2, lines 9-16, emphasis added).

In *Hanson*, the lower corners of the side gussets are not folded outwardly and together to form downward pointing triangular panels, but rather are part of the expanded, gusseted side walls of the bag that are forced inwardly as the sealed tube is disposed over the rectangular

mandrel. In the present invention, a slit (Figures 4 and 5) is cut between the edges of the gussets and the front and rear bag walls. This permits the lower corners of the side gussets to be folded outwardly, forming triangular panels that are then folded inwardly from the side gussets and having an upper edge 90. Lower portions of the front and rear walls are then folded inwardly and sealed together to form the bag bottom. The bag bottom is then sealed to the side gussets adjacent upper edges 90 of the triangular panels. This sealing of the upper edges 90 of the triangular panels to the completely flat bag bottom is a feature that is absent from *Hanson* or *Brock*. This feature provides a bag that is both stronger and more able to stand erect when empty or when loaded. If the present bag is heavily loaded and then picked up, the bag will always retain its square bottom.

In contrast, the bags of *Hanson* or *Brock*, when heavily loaded, will tend to return to the shape from which they originate, relying on the single bottom seam and the heat seals along lines 26 to retain the integrity of the bag. The present invention not only has the side seals along edges 90, but also the seam joining the bottom bag edges 45 and a seal joining the triangular panels to the upper surface of the bag bottom. Thus the present invention represents an inherently stronger and more stable bag of a substantially different design than either of the cited references. Based upon these differences, Claim 2 and 3 should be allowable.

The Examining Attorney has stated that "Claims 1 and 4-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 2 and 3 above, and further in view of *Beasley et al.* (5,335,788; hereinafter *Beasley* '788) and *Wilfong, Jr. et al.* (6,286,681; hereinafter *Wilfong, Jr.* '681). The bags of *Hanson* '970 as modified further fails to show each of the bags being attached at the top edges of at least one of the front and rear walls to at least one header strip with at least one hole and at least one weakened area. *Beasley* '788 shows a plastic bag stack (10) comprising a plurality of bags with each bag having at least one header strip (14)

with a hole (23), a weakened area is defined between an edge (24) of the hole and an edge of the header strip and the header strip attached at top edge of at least one of the front and rear walls (Figure 1). *Wilfong, Jr.* '681 suggests plastic bag stack (10) comprising a plurality of bags with each bag having at least one header strip (18) with a hole (26), a weakened area is defined between an edge of the hole and the top (27) of the header strip (Figure 3). It would have been obvious to one having ordinary skill in the art in view of *Beasley* '788 and *Wilfong, Jr.* '681 to modify the bags of *Hanson* '970 as modified so each of the bags comprises at least one header strip attached at the top edge of at least one of the front and rear walls and each header strip comprises a hole and a weakened area to facilitate attaching the stack of bags to a dispensing rack and to facilitate removing each bag from the stack.”

The bags shown in *Beasley* '788 and *Wilfong, Jr.* '681 are not considered by those in the industry to be “header bags” and the tear-off portions are not disposed at the top edges of the bags. Rather, these bags are usually described as t-shirt style bags with tear-off tabs. While Applicant’s search did not reveal any square bottom bags with attached headers, Applicant acknowledges that header bags are old and that it could be considered obvious to one skilled in the art to combine such header features with a square bottom bag of the type shown in *Hanson* '970 or *Brock* '544. For this reason, Applicant has cancelled Claim 1 and Claims 5, 7, 9, 13, 15 and 17 which depend on Claim 1. In addition, Claims 11, 19, 20 and 21 have been amended to remove references to Claim 1.

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Reconsideration of this application and its early allowance are respectfully requested in view of the above presented amendments and remarks.

Respectfully submitted,

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